AGRICULTURAL JOB OPPORTUNITY, BENEFITS, AND SECURITY ACT OF 2005

Overview and Summary of Significant Provisions
February, 2005

Overview—

- The Agricultural Job Opportunity, Benefits, and Security Act of 2005 is, in all substantive essentials, the same as S.1645, which attracted 63 Senate cosponsors in the 108th Congress.

Title I– Adjustment of Agricultural Workers to Temporary and Permanent Resident Status

Title I establishes a program whereby agricultural workers in the United States who lack authorized immigration status but who can demonstrate that they have worked 100 or more days in a 12 consecutive month period during the 18-month period ending on December 31, 2004 can apply for adjustment of status. Eligible applicants would be granted temporary resident status. If the farmworker performs at least 360 work days (no less than 2,060 hours) of agricultural employment during the six year period after the date of enactment, including at least 240 work days (no less than 1,380 hours) during the first three years following adjustment, and at least 75 days (no less than 430 hours) of agricultural work during each of three 12-month periods in the six years following adjustment to temporary resident status, the farmworker may apply for permanent resident status.

During the period of temporary resident status the farmworker is employment authorized, and can travel abroad and reenter the United States. Workers adjusting to temporary resident status may work in non-agricultural occupations, as long as their agricultural work requirements are met. While in temporary resident status, workers may select their employers and may switch employers. During the period of temporary resident status, the farmworker's spouse and minor children who are residing in the United States may remain in the U.S., but are not employment authorized. The spouse and minor children may adjust to permanent resident status once the farmworker adjusts to permanent resident status. Unauthorized workers who do not apply or are not qualified for adjustment to temporary resident status are subject to removal. Temporary residents under this program who do not fulfill the agricultural work requirement or are inadmissible under immigration law or commit a felony or three or more misdemeanors as temporary residents are denied adjustment to permanent resident status and are subject to removal. The adjustment program is funded through application fees.

Titles II and III—Reform of the H-2A Temporary and Seasonal Agricultural Worker Program

This section modifies the existing H-2A temporary and seasonal foreign agricultural worker program. Employers desiring to employ H-2A foreign workers in seasonal jobs (10 months or less) will file an application and a job offer with the Secretary of Labor. If the application and job offer meets the requirements of the program and there are no obvious deficiencies the Secretary must approve the application. Employers must seek to employ qualified U.S. workers prior to the arrival of H-2A foreign workers by filing a job order with a local job service office at least 28 days prior to date of need and also authorizing the posting of the job on an electronic job registry.

All workers in job opportunities covered by an H-2A application must be provided with workers' compensation insurance, and no job may be filled by an H-2A worker that is vacant because the previous occupant is on strike or involved in a labor dispute. If the job is covered by a collective bargaining agreement, the employer must also notify the bargaining agent of the filing of the

application. If the job opportunity is not covered by a collective bargaining agreement, the employer is required to provide additional benefits, as follows.

The employer must provide housing at no cost, or a monetary housing allowance where the Governor of a State has determined that there is sufficient migrant housing available, to workers whose place of residence is beyond normal commuting distance. The employer must also reimburse inbound and return transportation costs to workers who meet employment requirements and who travel more than 100 miles to come to work for the employer. The employer must also guarantee employment for at least three quarters of the period of employment, and assure at least the highest of the applicable statutory minimum wage, the prevailing wage in the occupation and area of intended employment, or a reformed Adverse Effect Wage Rate (AEWR). If the AEWR applies, it will not be higher than that existing on 1/01/03 and if Congress fails to enact a new wage rate within 3 years, the AEWR would be indexed to changes in the consumer price index, capped at 4% per year, with increases applied beginning the first March 1 following three years from the date of enactment. Employers must meet specific motor vehicle safety standards.

H-2A foreign workers are admitted for the duration of the initial job, not to exceed 10 months, and may extend their stay if recruited for additional seasonal jobs, to a maximum continuous stay of 3 years, after which the H-2A foreign worker must depart the United States. H-2A foreign workers are authorized to be employed only in the job opportunity and by the employer for which they were admitted. Workers who abandon their employment or are terminated for cause must be reported by the employer, and are subject to removal. H-2A foreign workers are provided with a counterfeit resistant identity and employment authorization document.

The Secretary of Labor is required to provide a process for filing, investigating and disposing of complaints, and may order back wages and civil money penalties for program violators. The Secretary of Homeland Security may order debarment of violators for up to 2 years. H2A workers are provided with a limited federal private right of action to enforce the requirements of housing, transportation, wages, the employment guarantee, motor vehicle safety, retaliation and any other written promises in the employer's job offer. Either party may request mediation after the filing of the complaint. State contract claims seeking to enforce terms of the H-2A program are preempted by the limited federal right of action. No other state law rights are preempted or restricted.

The administration of the H-2A program is funded through a user fee paid by agricultural employers.

Technical Adjustments Made in the 2005 AgJOBS bill

Several technical adjustments have been made to update or clarify provisions, relative to the predecessor bill introduced in 2003 (S. 1645). They include the following:

- Relevant dates associated with H-2A and earned adjustment provisions have been updated to reflect the passage of time since the original bill's introduction. Affected provisions remain substantively equivalent. The AEWR in 2009 and thereafter would be the same as if the 2003 bill (S. 1645) had been enacted in 2003.

- Time frames associated with the H-2A adverse effect wage rate and study, and future work requirements under the earned adjustment program, have been modified from "hard dates" to fixed time periods after date of enactment to ensure that the effect of the provisions remains constant regardless of timing of enactment.

- Language regarding eligibility for adjustment or grounds for removal for various acts has been added to clarify that the spouse or minor children of an alien applying for or working under temporary residency are held to the same strict standards for lawful behavior, and are excludable or deportable under the same standards that apply to the alien worker.

- New language clarifies that the bill does not limit the use or release of information contained in files or records of the Department of Homeland Security regarding criminal convictions or other information for immigration enforcement or law enforcement purposes.

- Clarifying language has been added to conform with the Personal Responsibility and Work Opportunity (Welfare Reform) Act of 1996, to ensure that adjusting AgJOBS workers have no advantage over other, legal immigrants, with regard to the timing and eligibility of means-tested public benefits.

- Technical clarifications have been made to carry out the authors' original intent only to authorize appropriations, not create or imply mandatory spending, to administer the Act.

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